

BEFORE THE DIVISION OF INSURANCE

STATE OF COLORADO

Order No. O-11-148

FINAL AGENCY ORDER

IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF HUMANA
HEALTH PLAN, INC.

Respondent

THIS MATTER comes before the Colorado Commissioner of Insurance ("Commissioner") as a result of a market conduct examination ("MCE") conducted by the Colorado Division of Insurance ("Division") of Humana Health Plan, Inc. ("Respondent"), pursuant to §§ 10-1-203, 10-1-204, 10-1-205, 10-3-1106, and 10-16-416, C.R.S.

The Commissioner has fully considered and reviewed the Market Conduct Examination Report ("Report") dated March 4, 2011, the relevant portions of the examiners' work papers, all written submissions and rebuttals provided by Respondent, and the recommendations of staff. The MCE Report covers the examination period of July 1, 2007 through June 30, 2009.

The Commissioner makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. At all relevant times during the examination, the Respondent was licensed by the Division to conduct business as a health maintenance organization insurer in the State of Colorado.
2. In accordance with §§ 10-1-203, 10-1-204, 10-1-205, 10-3-1106, and 10-16-416, C.R.S., on January 3, 2011, the Division completed a market conduct examination of the Respondent. The period of examination was July 1, 2007, through June 30, 2009.
3. In conducting the examination, the examiners observed those guidelines and procedures set forth in the 2010 Market Regulation Handbook adopted by the National Association of Insurance Commissioners. The Commissioner also

employed other guidelines and procedures that he deemed appropriate, pursuant to § 10-1-204(1)(a), C.R.S.

4. The MCE was completed on January 3, 2011. Pursuant to § 10-1-205(2), no later than sixty days after completion of the examination, the examiner in charge filed with the Division a verified written report of examination under oath. The Report was timely filed with the Division, under oath, on March 4, 2011. The Report was subsequently timely transmitted to Respondent on March 4, 2011.
5. Pursuant to § 10-1-205(1) the Report is comprised of only the facts appearing upon the books, records, or other documents of the Respondent, its agents or other persons who were examined concerning Respondent's affairs. The Report contains the conclusions and recommendations that the examiners find reasonably warranted based upon the facts.
6. April 3, 2011 fell on a Sunday. On April 4, 2011 Respondent timely filed written submissions and rebuttals to the Report as provided for at § 10-1-205(2), C.R.S.
7. The Commissioner has fully reviewed and considered the Report, all of Respondent's submissions and rebuttals, including but not limited to the Respondent's April 4, 2011 response to the verified written market conduct examination report.
8. The examination has proceeded under the substantive terms, authority and procedures set forth at §§ 10-1-203, 204 and 205, C.R.S., as well as § 10-3-1106, C.R.S.
9. This examination was not conducted as an informal investigation of consumer complaints.
10. This examination was not conducted as a targeted on-site examination pursuant to § 10-1-212, C.R.S.

CONCLUSIONS OF LAW AND ORDER

11. Unless expressly modified in this Final Agency Order, pursuant to § 10-1-205(3)(a), C.R.S., the Commissioner adopts the Report as filed.
12. The Commissioner has modified and corrected the Report to accurately reflect it was authored on March 4, 2011. The Report transmitted to Respondent on March 4, 2011 contained a January 3, 2011 date on the cover page, the correspondence to the Commissioner and on the last page of the Report. The January 3, 2011 date was the date of the completion of the examination and not the date the verified written report was filed with the Division.

13. In addition to the correction set forth in paragraph 12 above, the language in the Report has been modified or corrected by the Commissioner, for both substantive and non-substantive purposes, pursuant to § 10-1-205(3)(a), at the following pages and/or provisions:
 - a. Page 3, 7, 8, 9, 49, 50, 59, 60, 61, 74, 91, 110, 115, 116, 120, 128, 132 and
 - b. Recommendation Numbers 1-35 to provide for consistency and clarity.
 - c. Issue J2 was removed from the report.
14. The Commissioner hereby adopts and attaches the Report with specified modifications and corrections ("Modified Report") and incorporates it herein.
15. The Commissioner finds the Respondent is operating in violation of Colorado insurance law and hereby orders the Respondent to take necessary and appropriate action, as set forth herein, to cure such violations.
16. The Commissioner considered the options available under §10-1-205(3)(b) and (c), C.R.S. After full consideration the Commissioner did not reject the Report nor did the Commissioner direct the examiners to reopen the examination for the purposes of obtaining additional data, documentation, or information, or to refile the Report pursuant to subsection (1) of §10-1-205, C.R.S. The Commissioner finds an investigatory hearing, pursuant to §10-1-205(3)(c), C.R.S., for the purposes of obtaining additional documentation, data, information, and testimony, is not warranted.
17. The March 4, 2011, Report provided Respondent with the opportunity to show cause as to why it should not be found in violation of the Colorado insurance laws and/or regulations for all issues identified below. Respondent provided its response on April 4, 2011. The Commissioner hereby orders Respondent to cure the violations set forth below in the time frame and manner set forth below.
18. Issue A1 concerns the following: Failure, in some instances, to maintain records required for market conduct purposes. This failure constitutes a violation of Colorado Insurance Regulation 1-1-7. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised its policies and procedures to ensure that all future records required for market conduct purposes are retained and can be provided within the required time as is mandated by Colorado insurance law.
19. Issue A2 concerns the following: Failure to maintain an Access Plan as required by Colorado insurance law. This failure constitutes a violation of § 10-16-704, C.R.S. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has developed a written access plan for each managed care network offered in Colorado and has established written procedures to ensure ongoing compliance with Colorado insurance law in maintaining and making available an access

plan for each managed care network offered in Colorado.

20. Issue A3 concerns the following: Failure to annually provide required information to enrollees regarding the financial condition and any organizational changes to the health maintenance organizations. This failure constitutes a violation of § 10-16-407, C.R.S. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has established procedures to ensure compliance with Colorado insurance law in that all information required to be provided annually is provided to enrollees commencing with calendar year 2011.
21. Issue A4 concerns the following: Failure, in some instances, to properly certify policy forms and use of non-compliant forms. This failure constitutes a violation of § 10-3-1104, C.R.S. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has implemented procedures to ensure that all applicable forms to be issued or delivered to Colorado insureds comply with statutory mandates through certification by an officer of the Company, and as required by Colorado insurance law.
22. Issue C1 concerns the following: Failure to maintain a complete record of all the complaints received by the Company during the period under examination. This failure constitutes a violation of §§ 10-3-1104 and 10-16-409, C.R.S. and Colorado Insurance Regulations 4-2-17, 4-7-1 and 6-2-1. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has established procedures to ensure that all consumer complaints as defined by Colorado insurance law are recorded on the complaint records maintained by the Humana.
23. Issue E1 concerns the following: Failure, in some instances, to include the mandated benefit of hearing aids for minor children. This failure constitutes a violation of § 10-16-104, C.R.S. and Colorado Insurance Regulations 4-2-30, Emergency Regulation 08-E-12 and 4-6-5. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has established procedures to ensure that all applicable forms have been corrected to reflect the mandated coverage for hearing aids for minor children as required by Colorado insurance law.
24. Issue E2 concerns the following: Failure to provide reimbursement for covered services when lawfully performed by a licensed provider who is a family member. This failure constitutes a violation of § 10-16-104, C.R.S. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised all applicable forms to remove the exclusion for reimbursing licensed providers who are

family members as required by Colorado insurance law.

25. Issue E3 concerns the following: Failure to reflect correct/complete coverage for home health services and hospice care. This failure constitutes a violation of § 10-16-104, C.R.S. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised all applicable forms to reflect correct and complete provisions for home health care and hospice care services as required by Colorado insurance law.
26. Issue E4 concerns the following: Failure, in some instances, to reflect correct conditions under which coverage is to be provided for services received in an emergency room. This failure constitutes a violation of § 10-16-407, C.R.S. and Colorado Insurance Regulations 4-6-5, Emergency Regulation 08-E-12 and 4-7-2. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has established procedures to ensure that all applicable forms have been corrected to reflect the correct conditions under which coverage is to be provided for services received in an emergency room as required by Colorado insurance law.
27. Issue E5 concerns the following: Failure, in some instances, to reflect completely the coverage to be provided for organ transplants. This failure constitutes a violation of Colorado Insurance Regulation 4-6-5 and Emergency Regulation 08-E-12. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has established procedures to ensure that all applicable forms have been corrected to reflect the correct conditions under which coverage is to be provided for mandated organ transplant services as required by Colorado insurance law.
28. Issue E6 concerns the following: Failure, in some instances, to reflect the correct or complete coverage to be provided for a newborn. This failure constitutes a violation of Colorado Insurance Regulation 4-6-5 and Emergency Regulation 08-E-12. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has established procedures to ensure that all applicable forms have been corrected to reflect the correct and complete coverage to be provided for newborns as required by Colorado insurance law.
29. Issue E7 concerns the following: Failure, in some instances, to provide correct or complete Child Health Supervision Services. This failure constitutes a violation of § 10-16-104, C.R.S. and Colorado Insurance Regulation 4-6-5 and Emergency Insurance Regulation 08-E-12. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has established procedures to ensure that all

applicable forms have been corrected to reflect the correct and complete coverage to be provided for child health supervision services as required by Colorado insurance law.

30. Issue E8 concerns the following: Failure, in some instances, to reflect correct or complete utilization review procedures. This failure constitutes a violation of § 10-16-113, C.R.S. and Colorado Insurance Regulation 4-2-17. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has established procedures to ensure that all applicable forms have been corrected to reflect the correct and complete procedures to be used for utilization review as required by Colorado insurance law.
31. Issue E9 concerns the following: Failure to reflect all required information on the complaint forms to be given to enrollees who wish to register written complaints. This failure constitutes a violation of Colorado Insurance Regulation 4-7-2. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has corrected its Grievance/Appeal Request Form to include all items as required by Colorado insurance law.
32. Issue E10 concerns the following: Failure, in some instances, to reflect the correct upper age limit for medically necessary therapy for Congenital Defects and Birth Abnormalities to be provided. This failure constitutes a violation of § 10-16-104, C.R.S. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has corrected all applicable forms to reflect the correct upper age limit for which therapies for congenital defects and birth abnormalities are to be provided for a covered child as required by Colorado insurance law.
33. Issue E11 concerns the following: Failure, in some instances, to reflect the required coverage for mammography. This failure constitutes a violation of § 10-16-104, C.R.S. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has corrected all applicable forms to reflect the correct coverage for mammography as required by Colorado insurance law.
34. Issue E12 concerns the following: Failure, in some instances, to reflect correct or complete benefits for prostate cancer screenings. This failure constitutes a violation of § 10-16-104, C.R.S. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has corrected all applicable forms to reflect the correct and complete coverage for prostate cancer screening as required by Colorado insurance law.

35. Issue E13 concerns the following: Failure, in some instances, to reflect the mandated benefit for cervical cancer vaccination. This failure constitutes a violation of § 10-16-104, C.R.S. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has corrected all applicable forms to reflect the mandated benefit for cervical cancer vaccination as required by Colorado insurance law.
36. Issue E14 concerns the following: Failure, in some instances, to provide for replacement or repair of prosthetic devices. This failure constitutes a violation of § 10-16-104, C.R.S. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has corrected all applicable forms to reflect the correct coverage to be provided for prosthetic devices as required by Colorado insurance law.
37. Issue E15 concerns the following: Failure to allow coverage to continue for an insured based solely on that individual's membership in the uniformed services of the United States. This failure constitutes a violation of § 10-16-104, C.R.S. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised all applicable forms to indicate, as required by Colorado insurance law, that coverage shall not terminate based solely on an individual's membership in the uniformed services of the United States.
38. Issue E16 concerns the following: Failure, in some instances, to reflect correct or complete Grievance and Appeal Procedures. This failure constitutes a violation of Colorado Insurance Regulations 4-2-17 and 4-2-21. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised all applicable forms to reflect complete and correct grievance and appeal procedures as required by Colorado insurance law.
39. Issue E17 concerns the following: Failure, in some instances, to reflect the correct information concerning payment of premium for a newborn. This failure constitutes a violation of § 10-16-104, C.R.S. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised all applicable forms to reflect the correct provisions under which coverage is to be provided for newborns as required by Colorado insurance law.
40. Issue E18 concerns the following: Failure to reflect that coverage is to be provided for urgent, non-routine after hours care for out-of-network services if an insured is temporarily traveling out of the service area. This failure constitutes a violation of Emergency Insurance Regulation 08-E-12 and Amended Colorado Insurance Regulation 4-6-5. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written

evidence to the Division that it has revised all applicable forms to reflect the correct coverage to be provided for urgent, non-routine, after hours care for out-of-network urgent care facilities as required by Colorado insurance law.

41. Issue E19 concerns the following: Failure, in some instances, to allow coverage for transportation associated with hospice care. This failure constitutes a violation of Colorado Insurance Regulation 4-2-8, Emergency Insurance Regulation 08-E-12, and Colorado Insurance Regulation 4-6-5. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised all applicable forms to reflect that transportation is a mandated benefit to be included under hospice care as required by Colorado insurance law.
42. Issue E20 concerns the following: Failure, in some instances, to reflect the mandated early intervention services to be provided as of January 1, 2008. This failure constitutes a violation of § 10-16-104, C.R.S. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised all applicable forms to reflect the mandated benefit for early intervention services as required by Colorado insurance law.
43. Issue E21 concerns the following: Failure to reflect correct information as to which Colorado counties have no participating providers. This failure constitutes a violation of § 10-16-704, C.R.S. and Colorado Insurance Regulation 4-7-1. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised all applicable forms to reflect the correct information as to which counties have no participating providers as required by Colorado insurance law.
44. Issue G1 concerns the following: Use of a group policy issued to the Employers Health Insurance Benefit Trust, a non-approved Trust, to offer conversion plans to eligible individuals. This failure constitutes a violation of § 10-3-903.5, C.R.S. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has discontinued use of the group policy issued to the Employers Health Insurance Benefit Trust to offer conversion plans to eligible individuals as required by Colorado insurance law.
45. Issue G2 concerns the following: Failure to ensure that there are no restrictive underwriting practices and standards for small employer groups. This failure constitutes a violation of §§ 10-16-102 and 10-16-105, C.R.S. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has discontinued the use of restrictive underwriting practices for eligible small employer groups as required

by Colorado insurance law.

46. Issue H1 concerns the following: Failure to reflect a definition of “Significant break in coverage” on Certificates of Creditable Coverage. This failure constitutes a violation of § 10-16-118, C.R.S. and Colorado Insurance Regulation 4-2-18. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has implemented procedures to ensure that all Certificates of Creditable Coverage reflect the complete definition of a “Significant break in coverage” in compliance with Colorado insurance law.
47. Issue H2 concerns the following: Failure, in some instances, to offer each member of a terminating group a choice of the Basic or Standard Health Benefit plan. This failure constitutes a violation of § 10-16-108, C.R.S. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has implemented procedures to ensure that all cancelled or terminated small groups are offered a choice of Basic or Standard Health Benefit Plans in compliance with Colorado insurance law.
48. Issue J1 concerns the following: Failure, in some instances, to pay, deny, or settle claims within the time periods required by Colorado insurance law. This failure constitutes a violation of § 10-16-106.5, C.R.S. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has reviewed and modified its claims processing quality controls to ensure that all claims are adjudicated within the required time periods as required by Colorado insurance law.
49. Issue K1 concerns the following: Failure, in some instances, to include a consultation with an appropriate clinical peer when evaluating first level review appeals. This failure constitutes a violation of Colorado Insurance Regulation 4-2-17. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has implemented procedures to ensure that all first level reviews are evaluated by a physician who shall consult with an appropriate clinical peer or peers unless the reviewing physician is a clinical peer, as required by Colorado insurance law.
50. Issue K2 concerns the following: Failure, in some instances, to notify and issue a First Level Appeal decision no later than thirty (30) days after receipt of the grievance requesting the first level review. This failure constitutes a violation of Colorado Insurance Regulation 4-2-17. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has implemented procedures to ensure that all utilization review determinations are made within the time periods required by

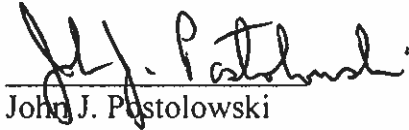
Colorado insurance law.

51. Issue K3 concerns the following: Failure, in some instances, to have written denials of requests for benefits as not medically necessary, appropriate, effective, or efficient signed by a licensed physician. This failure constitutes a violation of § 10-16-113, C.R.S. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has implemented procedures to ensure that all written denials of requests for covered benefits on the ground that such benefits are not medically necessary, appropriate, effective, or efficient shall be signed by a licensed physician familiar with standards of care in Colorado as required by Colorado insurance law.
52. Issue K4 concerns the following: Failure to include correct information regarding preauthorization in utilization review approval letters. This failure constitutes a violation of §§ 10-3-1104, 10-16-704, C.R.S. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide written evidence to the Division that it has implemented procedures to ensure that all written approval of preauthorization for covered benefits are in compliance with Colorado insurance law.
53. The issues and violations described in paragraphs 18 through 53 above are grounds for monetary penalties to be imposed pursuant to § 10-1-205(3)(d), C.R.S. The Respondent shall pay a civil penalty to the Division in the amount of one hundred fifteen thousand and no/100 dollars (\$115,000.00) for the cited violations of Colorado law. The \$7,500.00 penalty shall be assessed a surcharge of 10% of the penalty amount up to a maximum of \$7,500.00, pursuant to 24-34-108, C.R.S., for a total balance due of one hundred twenty-two thousand and no/100 dollars (\$122,500.00). This penalty and surcharge shall be due to the Division no later than thirty (30) days from the date of this Final Agency Order. This surcharge shall be used to fund the development, implementation and maintenance of a consumer outreach and education program.
54. Pursuant to § 10-1-205(4)(a), C.R.S., within sixty (60) days of the date of this Final Agency Order, the Respondent shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted Modified Report and this Final Agency Order dated May 4, 2011, which incorporates the adopted Modified Report.
55. This Final Agency Order shall not prevent the Division from commencing future agency action relating to conduct of the Respondent not specifically addressed in the Modified Report, not resolved according to the terms and conditions in this Final Agency Order incorporating the Modified Report, or occurring before or after the examination period. Failure by the Respondent to comply with the terms of this Final Agency Order may result in additional

actions, penalties and sanctions, as provided for by law.

56. Copy of the Modified Report and this Final Agency Order will be made available to the public no earlier than thirty (30) days after the date of this Final Agency Order, subject to the requirements of § 10-1-205, C.R.S.
57. Pursuant to § 10-1-205(4)(a), C.R.S., this Final Agency Order shall be considered a final agency decision. Review of such decision may be sought in the district court in and for the city and county of Denver and shall be governed by the "State Administrative Procedure Act," article 4 of title 24, C.R.S.
58. Pursuant to § 10-1-205(4)(e), C.R.S., the civil penalty assessed in this Final Agency Order may be appealed directly to the court of appeals within the applicable time frames of the Colorado Appellate Rules.

WHEREFORE: It is hereby ordered that the findings of facts and conclusions of law contained in the adopted Modified Report attached hereto are hereby adopted and filed and made an official record of this office, and the within Final Agency Order incorporating the Modified Report is hereby approved and effective this 4th day of May, 2011.



John J. Postolowski
Interim Commissioner of Insurance

CERTIFICATE OF MAILING

I hereby certify that on the 4th day of May, 2011, I caused to be deposited the **FINAL AGENCY ORDER NO. O-11-148 IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF HUMANA HEALTH PLAN, INC.**, in the United States Mail via certified mailing with postage affixed and addressed to:

Mr. Michael B. McCallister, President
Humana Health Plan, Inc.
321 West Main Street
Louisville, KY 70202



Eleanor Patterson
Market Regulation Administrator
Division of Insurance